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File No. O. Money Lender 49

Legal Department

A BRANCH

Subject:—

Opinions Under the Bombay Money Lenders Act-1946

P-13/E

File No. O. Money Lenders/49

Form 104

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C O N T E N T S.

Legal Department File No. O.Money Lenders/49

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Recovery of arrears from Grain Depots.

Land Revenue Code.

The dues of the Grain Depots cannot be recovered by having recourse to coercive process and no agreement is a party (see section 187 of the Bombay Land Revenue Code).

Sd/- P.M.LAD.
Remembrancer of Legal Affairs.

U.R. to R.D. No.12064, dated the 18th December 1948.

JPS.6/6/56.
4 copies.

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Loans by Grain Depots.

Bombay Money-lenders Act, 1946.

It is presumed from Government's letter No.1227-H/39, dated 14-12-1942(at p.241 of R.D.File No. 1227/39-I of 1939) addressed to the Commissioner, S.D., that the Grain Depots though managed through Government agencies, are not Government institutions i.e. bot owned by Government. If so, the view taken by the Revenue Department at page 47 ante is correct and the advances made by these depots cannot be treated as loans by Government.

Id/- P.M.L.
20/3

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3442, dated the 30th March 1949.

JPE.6/6/66.
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Bombay Money Lenders Act, 1946,- Sections 6 (4) and 7.

Bombay Money Lenders Rules, 1947- Rules 4(2) and 5.

By the time the pending applicationswere made after the prescribed date, the Bombay Act LVIII of 1948 amending section 6 of the Bombay Money Lenders Act had not come into force. Consequently the proviso to section 6(4) of the Bombay Money Lender Act would not be applicable rates could not be leviable. These applications, not being received within the prescribed time, can be rejected. As, however, such rejection would render illegal their business done after the expiry of their old licences, these applications may be treated as applications for a fresh licence and new licences may issued with effect from the expiry of the old licences.

2. Although no enquiry is prescribed for renewing the licences, an enquiry as provided in section 7 will have to be made even in respect of renewing the licences.

Id/- P.M.L.
12/4

Remembrancer of Legal Affairs.

U.R. to R.D.No. 4180, dated the 18th April 1949.

PR.6/6/56
copies.

L.D.R. R.I.No. 3471 dt. 8-3-49.

Submitted.

Please see letter at p. 1-3 ante addressed to the Secy. to Govt., R.D. by the Registrar General of Money Lenders, M.P. Poona.

It appears that certain money Lenders have stopped their business with effect from 17-11-47 i.e. the date of coming into force of the Bombay Money Lenders Act, 1946. They have not applied for licenses on the ground that no licence is required for effecting recoveries of the loans advanced before 17-11-47. It is contended by some money lenders that the provisions of secs. 18 and 19 regarding maintenance of accounts and submission of statements of a/cs are not obligatory on them in respect of the amt of loans advanced before 17-11-47 and all transactions or recoveries made on this a/c on and after 17-11-47. The Registrar General of Money Lenders is of the opinion thatthe provisions of the Act are not applicable to money Lenders who have stopped their business with effect from 17-11-47, and it is not necy. for them to apply for licenses under sec. 6 of the Act. He has however referred them fol. questions for the consideration of the R.L.A.

(1) Whether ~~thin~~ respect of loans advanced before 17-11-1947, it is permissible for licenced money-Lenders to charge interest at the contractual rates of interest even though, they may be in excess of the maximum rates prescribed by Provincial Government under section 25(1);

(2) Whether the provisions of sections 18 and 19 of the Act are applicable to loans advanced before 17-11-1947 and whether the moneylenders who have continued their businesss are required to maintain the accounts in the prescibed forms and furnish statements of accounts to debtors as provided for under sections 18 and 19 of the

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Bombay Money Lenders Act, 1946. Secs.18,19 and 25.

The first question raised by the Registrar General of money lenders at page 3 of his letter is answered in the affirmative as the concluding part of section 25(2) of the Bombay Money Leders Act appears to exempt past transactions i.e. those before 17-11-1947, from the limitation on rate of interest.

The second question raised by him is answered in the negative except in respect of matters falling under section 19(2) which applies even to transactions before 17-11-1947.

Id/- P.M.L.
31/3/
Remembrancer of Legal Affairs.

U.R. to R.D. No. 3532, dated the 1st April 1949.

PE.7/6/56
4 copies.

L.D.E.I.No. 7983 dated 11-5-49.

Submitted with reference to R.L.A's opinion No. 4180 dated 18-4-49.

For the facts of the case please see O.N. dated 6-4.

It is contended by the R.D. that since according to section 8 of the Bombay Money Lenders Act, 1946 (Act XXXI of 1947) "a licence shall be valid from the date on which it is granted to the 31st day of July following," it would not be correct to issue instructions to the Registrars to grant licenses fromthe date of expiry of the previous licences.

In thsese circumstances R.L.A. has been requested to advise what best can be done now. The suggestion made by R.D. Office that the Registrars shouk be instructed to renew the licences from the date of renewal and not to take any penal action against the money-lenders is not acceptablex to Secretary R.D.

JPE.7/6/56.
4 copies.

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Bombay Money Lender Act, 1946.

R.L.A's Opinion No. 4180 dt. 18/4/49

The view taken by Revenue Department does not appear to be correct.

"Section 374 of the long since repealed Merchant Shipping Act, 1854 (Chapter 104) which enacted that no licence if granted by the Trinity House to pilots shall continue in force beyond the 31st of January after its date; but that the same may be renewed on such 31st of January in every year or any subsequent date was construed as meaning not that the renewed licence must be issued on or after that day, but that they should take effect from the 31st of January. This departure in the strict letter was justified by the great inconvenience which would have resulted from a rigid adherence to it. "See Maxwell pp. 206-207, The same principle can be applied to licences to be renewed in the present case under the Bombay Money Lenders Act, 1946. These renewed licences can be directed to take effect from the date of the expiry of the old licences which would be deemed to be thedate on which they would be grated within the meaning of section 9.

Id/- P.M.L.
24/6
Remembrancer of Legal Affairs.

U.R. to R.D. No. 7070, dated the 25th June 1949.

JPE.7/6/49
4 copies,

Legal Department.

Section 10(1) of the Bombay Money Lenders Act, provides that no court shall pass a decree in favour of a money lender in any suit filed by a money lender, unless the court is satisfied that at the time when the loan or any part thereof to which the suit related was advanced, the money lender is to be given time to produce one. The section does not provide that nosuit shall be entertained or instituted unless the money lender holds a valid licence. Thus the question whether a person is a money lender and has complied with the provisions of the Bombay Money Lendefs Act does not bar the jurisdiction of the court from entertaining a suit. It will not therefore be proper to require the courts to try the question as a preliminary issue. Generally preliminary issues are framed on the points of Law such as jurisdiction or limitation which prevent the court from entertaining a suit. Even such issues cannot be framed or decided unless the defendant has appeared or has failed to appear after being summoned. There will e several practical difficulties in requiring the courts to try the question whether a person is a money lender as a preliminary issue before summoning the defendant. In the first place it cannot be so provided without altering the scheme of the Act as embodied in such provisions as section 10. Secondly if the court decides the point on a preliminary issue, the question will arise whether he defendant can ask the court to reopen it afterwards. In the absence of the defendant the material which will be provided by the plaintiff before the court will not be always sufficient. However if the court records a finding on a preliminary issue regarding the status of the plaintiff, there will always be a tendency to take the matter at that stage to a higher court either in appeal by asking the court to frame a preliminary decree or in revision. Such a state of affairs actually

occurred in the case of the Dekkhan Agriculturish Relief Act. The result will be that litigation will be protracted and the remedy suggested by the Registrar of money lenders in Bombay will be worse than the evil. Suits for the recovery of most of the loans will be of small cause nature and will be tried without having recourse to theelaborate procedure prescribed in the Civil Procedure Code. As pointed out in Revenue Department notes sections 10 and 21 of the Act aresufficient safe-guards and the change suggested by the Registrar of money lenders Bombay, is neither desirable nor practicable nor appears necessary.

Sd/- R J.R.D.
23/7

Additional Secretary to Government.

U.R. to R.D., No. 8322, dated the 23rd July 1949.

JPE.7/6/5
4 copies.

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Under Government Resolution, Revenue Department, No. 4566/39, dated the 17th September 1940, Government have authorised the Commissioners of the Divisions as Court of Wards to sanction loans for periods of less than a year from the funds of one estate to those holding other estates subject to the condition that interest at 5% per annum is paid to the creditors of the Estate for the period for which the loans remains unpaid. There are several estates under the management of the Court of Wards and it has been the practice to advance a temporary loan from one estate to another when required, with the sanction of th Commissioner. The Registrar General of Money-lenders has raised the question, whether the Court of Wards will requireda licence under the Bombay Money Lenders Act for sanctioning temporary loans from one estate to another under its management. Revenue Department appears to be of the view that unless there is a continuity of lending a persons will not be deemed to be in the business of money lending and tranctions of the Court of Wards in advancing loans from surplus funds of one estate to another estate for payment of debts may be casual and not frequent, and consequently, it would h not be necessary for the Court of Wards to take a licence. RLA. is requested to advise.

Under section 5 of th Bombay Money-Lenders Act, 1946, no money lender shall carry on the business of money-lending except in accordance with the terms and conditions of such licence. It is clearf from this provision that a money lender would require a licence for carrying on the business of Moneylending. What is, therfore, necessary is that the person must be a money lender and must carry on the business of money-lending. A "Money Lender" is defined in section 2 clause (10). Admittedly, the Court of Wards does not fall under that definition. The business of money-lending is

defined....

defined in section 2 clause (2) as meaning the business of advancing loans whether in connection with or in addition to any other business. To constitute the business of money-lending it is necessary to prove some degree of system or continuity in money-lending transactions. (See Halsbury 23 p. 181). In advancing loans from surplus funds of one estate to another, the Court of Wards does not strictly speaking advance money; for advancing money contemplates a second party. Since the estates are under th Court of Wards, advance of money from surplus funds of one estate to another estate does not involve a second party. Besides, there is no degree of system of continuity in lending from the surplus funds of one estate to another estate under the management of the Court of Wards, for such lending is merely casual and intended to tide over the difficulties of another estate. Consequently, the Court of Wards would not be required to take a licence under section 5 firstly, because it is not a money-lender; secondly, because it does not engage in the business of money-lending; and thirdly, because the lending from surplus funds of one estate to another estate under its own management would not amount to money lending as is generally understood.

Id/- P.M.L.
29/7

Membrancer of Legal Affairs.

U.R. to R.D., No. 8603,

dated the 30th July 1949.

JPE.7/6/56.
4 copies.

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Bombay Money Lenders Act, 1946. Sec. 25(1).

The question raised mkfor the R.L.A's consideration is whether a commercial firm or dealer, say, for instance, a dealer in petrol or any other commondity, can charge interest at rates exceeding those specified by section 25(1) of the Bombay Money Lenders Act, 1946, on the unpaid bills of customers.

Section 25(1) empowers Government to fix themaximum rates of interest for any local area or class of business of money lending in respect of secured andunsecured loans. The limitation of rate of interest prescribed by section 25(1) would apply only to those who do thebusiness of money lending. "Business of mon y leding" as defined in section 2(ii) means the business of advancing loans whether or not in connection with or in addition to any other business. The charging of interest on the paid bills of customers is based on mercantile usages according to which the interest is payable not by agreement but by way of damages for non payment of the principle (see Halsbury's Laws of England, Vol. 23, p. 175). These dealers do not advance money. Consequently they cannot be considered to be doing the business of money leding within themeaning of section 2(ii), although they may recover interest on unpaid bills. Section 25(1) of the Bombay Moneylenders Act will have nok application to such dealers unless they normally as a business advance goods on credit subject to payment of interest.

Id/- P.M.L.
22/8
Remembrancer of Legal Affairs.

U.R. to R.D. No. 9492 dated the 23rd August 1949.

JPE.7/6/56.4c.